

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1244

To be argued by
DAVID J. GOTTLIEB

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P/s

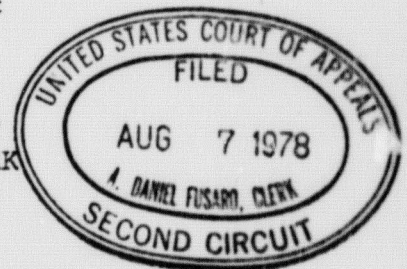
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
:
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UNITED STATES OF AMERICA, :
:
Plaintiff-Appellee, :
:
-against- :
:
JOSEPH R. PUGIA, SR., :
:
Defendant-Appellant. :
:
-----X

Docket No. 77-1244

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK



THE LEGAL AID SOCIETY
FEDERAL DEFENDER SERVICES UNIT
Attorney for Appellant
531 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

DAVID J. GOTTLIEB,

Of Counsel.

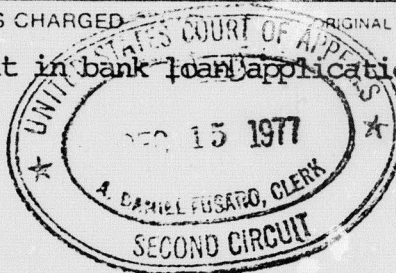
PAGINATION AS IN ORIGINAL COPY

CRIMINAL DOCKET - U.S. District Court

PETTY OFFENSE PO	JUDGE/MAGISTRATE Assigned	U.S.
OTHER MINOR OFFENSE MO	206 6	vs.
OTHER MISDEMEANOR Mis	Disp / Sentence	
FELONY Fel	X District Office	(LAST, FIRST, MIDDLE)

PUGIA, JOSEPH R., SR.

Case Filed	Mo. Day	Yr.	Docket No.
9	22	76	89
No. of Docs			
JUVENILE	* 1		

U.S. TITLE/SECTION
18 USC 1014OFFENSES CHARGED
False statement in bank loan application 3

U.S. MAG. CASE NO.	BAIL - RE
AMT	Set
\$ 5,000	PSA
Date	Conc
Bail Not Made	Collat
Status Changed (See Docket)	3rd Prty Cust

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL	SENTENCE
U.S. Custody Began 9/29/76 Summons Served First Appearance	High Risk Date 9/22/76 Indict. Waived In Charging District Superseding Indict/Info	10/12 1st Plea Final Plea	Trial Set For Voor Dire Trial Began Trial Ended	Disposition of Charges Convicted Acquitted Dismissed
				On All On Les Offens WOP On Govern'ts Motion

MAGISTRATE		DATE	INITIAL/NO	INITIAL APPEARANCE DATE	INITIAL/NO	OUTCOME
Search Warrant	Issued Return			PRELIMINARY EXAMINATION OR REMOVAL HEARING		DISMISSED HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT OF
Summons	Issued Served			Waived Not Waived Intervening Indictment		
Arrest Warrant Issued				Tape Number		
COMPLAINT						
OFFENSE (In Complaint)						

U.S. Attorney or Asst.

ATTORNEYS

Defense CJA A Pst Waived Set None / Other PD

Joseph A. Pavone, Asst.

Emil J. Warchol

Show last names and suffix numbers of other defendants on same indictment information.

DATE	DOCUMENT NO.	PROCEEDINGS
1976		
Sept. 22		Filed Indictment
Sept. 27		Defendant's name called-no answer. Bench Warrant to be issued, bail to be fixed by Magistrate.
Sept. 29		Filed executed Warrant for Arrest, ex. 9/29/76. Filed Bail Reform Act Form, Appearance Bond. Bail \$5,000 -Surety: Midland Insurance Company.
Oct. 12		The deft. is arraigned and pleads not guilty. All motions to be made returnable on Oct. 26 at Utica. Motions to be filed on or before Oct. 19, 1976, answering papers on or before Oct. 22. Deft. is continued on bail.
Nov. 19		Filed copy of letter to Atty. Warchol from AUSA Pavone regarding discovery.
11/30		Filed Notice of Motion returnable 12/13/76 Syracuse.

DATE	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY
1976			
Dec. 1	Filed Gov't. response in opposition to motion to quash or dismiss.		
Dec. 2	Filed Government requested Voir Dire - examination of jury.		
Dec. 6	Filed Gov't.'s response in opposition to amended motion to dismiss and for Order to inspect Grand Jury minutes.		
Dec. 16	Filed Government's request to charge.		
Dec. 7	Filed Reply to Government's Response to Motion to dismiss.		
Dec. 7	Filed Defendant's requested Voirdire.		
Dec. 7	Trial - motion to dismiss is heard and denied. Jury drawn and sworn. 2 alternates drawn. Witnesses for Govt.		
Dec. 8	Trial continued. Witnesses for Govt. Witnesses for Deft. Mr. Warchol moves to dismiss on grounds stated-denied.		
Dec. 9	Trial continued. Witness for deft. deft. rests. Mr Warchol moves to dismiss on grounds stated-denied. Judge Munson charges the jury from 3:30 to 3:52. At 8:40 jury comes into court and find deft. Guilty on Count 1, Not guilty on counts 2 and 3. Jury is polled. Mr. Warchol holds his motions until Dec. 16 at 10:00 a.m. Deft. continued on his own recognizance.		
Dec. 9	Filed Court Exhibit # 1.		
Dec- 16	All parties argue motions to dismiss and to set aside the verdict and enter a judgment of acquittal for the deft. on count one of the Indictment. Decision is reserved, deft. continued on own recognizance.		
1977			
Feb. 28	Motion to set aside verdict is denied in all respects. Defendant is continued on own-recognizance. March 28, 1977 is the date for sentencing.		
Mar. 28	The Court advised the defendant of his right to speak in his own behalf, defendant spoke, his attorney spoke. Imposition of sentence is suspended and defendnat is placed on probation for a period of two years on Count one of the Indictment. The defendant is advised of his right to appeal.		
Mar. 28	Filed Judgment and Probation.		
Apr. 4	Filed Notice of Appeal.		
May 11	Filed Appeal Scheduling Order from United States Court of Appeals for the Second Circuit, dated May 6, 1977.		
June 13	Filed Transcript of Excerpts of Trial held on 8th and 9th days of December 1976 before Hon. Howard G. Munson at Syracuse.		

DATE	RECEIPT NUMBER	CO. NUMBER	DATE	RECEIPT NUMBER	CO. NUMBER

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

JOSEPH PUGIA

76

89

Yr.

Dock

DATE	PROCEEDINGS (continued)	V. EXCLUDA	
		(a)	(b)
1977 Nov. 3	Forwarded certified copy of index of record on appeal to C.C.A., 2nd Circuit.		

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

V.

JOSEPH R. PUGIA, SR.

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)

Criminal No.

76-CR- 76-CR- 89

INDICTMENT

[Vio: 18 USC 1014]

COUNT I

THE GRAND JURY CHARGES:

B On or about the 13th day of September, 1974, in the Northern District of New York, at Herkimer, New York, JOSEPH R. PUGIA, SR., knowingly did make a materially false statement in a financial statement submitted by him to Bankers Trust Company of Central New York, formerly Mohawk Valley State Bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank to approve and extend loans to Mutual Auto Sales, Inc., in that JOSEPH R. PUGIA, SR., stated and represented in said financial statement that he was the owner, as of August 13, 1974, of an asset described as "real estate at 318 William Street, Herkimer, New York, market value \$14,000.00", whereas, in truth and fact, as JOSEPH R. PUGIA, SR., well knew, he was not the owner of said asset as of August 13, 1974.

In violation of Title 18, United States Code, Section 1014.

COUNT II

THE GRAND JURY FURTHER CHARGES:

On or about the 13th day of September, 1974, in the Northern

District of New York, at Herkimer, New York, JOSEPH R. PUGIA, SR., knowingly did make a materially false statement in a financial statement submitted by him to Bankers Trust Company of Central New York, formerly Mohawk Valley State Bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank to approve and extend loans to Mutual Auto Sales, Inc., in that JOSEPH R. PUGIA, SR. stated and represented in said financial statement that he was the owner, as of August 13, 1974, of an asset described as "real estate consisting of 2 lots, '160 x 80', located at 605 Maple Grove Avenue, Herkimer, New York, market value \$10,000.00," whereas, in truth and fact, as JOSEPH R. PUGIA, SR., well knew, he was not the owner of said asset as of August 13, 1974.

In violation of Title 18, United States Code, Section 1014.

COUNT III

THE GRAND JURY FURTHER CHARGES:

On or about the 13th day of September, 1974, in the Northern District of New York, at Herkimer, New York, JOSEPH R. PUGIA, SR., knowingly did make a materially false statement in a financial statement submitted by him to Bankers Trust Company of Central New York, formerly Mohawk Valley State Bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank to approve and extend loans to Mutual Auto Sales, Inc., in that JOSEPH R. PUGIA, SR., stated and represented in said financial statement that he was the owner, as of August 13, 1974, of an asset described as "Deposit, American Motors Corporation, \$26,000.00," whereas, in truth and fact, as JOSEPH R. PUGIA, SR., well knew, he was not the owner of

said asset as of August 13, 1974.

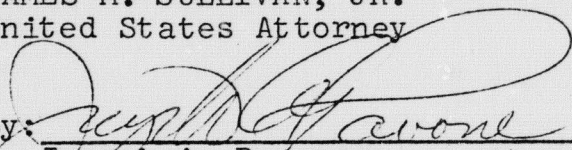
In violation of Title 18, United States Code, Section 1014.

A TRUE BILL


FOREMAN OF THE GRAND JURY

JAMES M. SULLIVAN, JR.
United States Attorney

By:


Joseph A. Pavone
Assistant United States Attorney

Judge Port

- 9/27/76 Deft. name called-no answer. Direct a bench warrant be issued, bail to be fixed by Magistrate.
- 10/12/76 The defendant is arraigned and pleads not guilty. All motions to be made returnable on October 26 at Utica. Motions to be filed on or before October 19, 1976, answering papers on or before October 22. Deft. is continued on bail.
- Judge Munson
- 2/28/77 Motion to set aside verdict is denied in all respects. Defendant is continued on own recognizance. March 28, 1977 is the date for sentencing.
- 12/7/76 Trial.
- 12/8/76 Trial continued
- 12/9/76 Trial continued. Jury comes into court and finds deft. Guilty on Count 1, not guilty on counts 2 and 3.
- 12/16/76 All parties argue motions to dismiss and to set aside the verdict. and enter a judgment of acquittal for the deft. on count one of the Ind. Decision is reserved, deft. continued on own recognizance.
- 3/28/77 The Court advised the defendant Joseph R. Pugia, Sr. of his right to speak in his own behalf, defendant spoke, his attorney spoke. Imposition of sentence is suspended and defendant is placed on probation for a period of two years on Count one of the Indictment. The defendant is advised of his right to appeal.

Form No. 100

76-CR- 76-CR- 89
No. _____

UNITED STATES DISTRICT COURT

NORTHERN District of NEW YORK

Division

THE UNITED STATES OF AMERICA

vs.

JOSEPH R. PUGIA, SR.

INDICTMENT

3 Counts -
VIO: 18 USC 1014 - FALSE
STATEMENT IN LOAN APPLICATION

A true bill.

Carl P. Sarned
Foreman.

At Syracuse, N. Y.
Filed in open court this _____ day

of _____, A. D. 1976

U. S. DISTRICT COURT
N. D. OF N. Y. Clerk.

FILED

Bail, \$ _____ SEP 22 1976

AT O'CLOCK M.

J. R. SCULLY, CLERK
SYRACUSE GPO 868-929

1
2 THE COURT'S CHARGE TO THE JURY
3
4

5 THE COURT: Ladies and gentlemen of the
6 jury, as you know, it now becomes the province of the
7 Court to charge you as to what the law is. But first
8 of all I would like to say to you, I apologize in
9 submitting this case to you this late; however, it
10 was unavoidable, and I don't want that to influence
11 your deliberations or opinion in this case in any
12 manner.

13 Secondly, I would like to thank you for
14 your attention and patience during this case and to
15 compliment both Counsel on their presentations.

16 But now that you have heard the evidence
17 and the arguments of Counsel, as I just said, it
18 becomes my duty to give you the instructions of the
19 Court as to the law that is applicable to this case.
20 It is your duty as jurors, and I think I have told
21 you before, to follow the law as stated in the
22 instructions that I am now giving you and to apply
23 the rules of law so given to the facts as you find
24 them from the evidence and exhibits in the case.

25 You are not to single out one instruction

C

standing alone as stating what the law is, but you must consider all of the instructions that I give you as a whole. And neither are you to be concerned with the wisdom of the rules or any rule of the law that I give you regardless of any opinion which you may have as to what the law ought to be. It would be a violation of your sworn duty to base a verdict upon any other view of the law than that which I give you or is given in the instructions of this Court, just as it would be a violation of your sworn duty as judges of the facts to base a verdict upon anything else except the evidence that has been presented here. A jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors and to arrive at a verdict by applying the same rules of law as given in the instructions of the Court. And just as I am the sole judge of the law, you are the sole judge of the facts. You have been chosen and you have been sworn in as jurors in this case to try the issues of fact as presented by the allegations in the indictment and the denial made by the not guilty plea of the accused. You are to perform this duty without bias or prejudice to any party. The law does not permit jurors to be governed

1 by sympathy, prejudice or public opinion. Both the
2 accused and the public expect that you will carefully
3 and impartially consider all of the evidence in this
4 case and follow the law as stated by the Court, reach
5 a just verdict regardless of the consequences. And I
6 will talk to you more about the consequences a little
7 later.

8 Now, how do you go about finding the
9 facts? Finding the facts is merely a process by
10 which you, as a juror and as a jury as a whole,
11 consider the evidence which has been presented to you.
12 You consider the exhibits and the testimony of all
13 of the witnesses, both on direct examination and cross-
14 examination. There is nothing particularly different
15 about the way a jury should consider the evidence in
16 a criminal case from that in which all reasonable
17 persons treat any question depending upon evidence
18 presented to them. You sit through the evidence, you
19 weigh it on the scale of your reasoning powers and
20 your common sense, and you draw such conclusions as
21 your good every day judgment tells you the evidence
22 supports and justifies. In short, you are to decide
23 just what the truth is in this case.

24 One thing you should keep in mind as you
25 determine the facts is that any reference by the Court

1 or by Counsel to matters of evidence which does not
2 coincide with your recollection, it is your recol-
3 lection and yours alone which should control during
4 the deliberations. Now, however, if you cannot
5 recollect together -- and by the way, when I say your
6 recollection, I mean your recollection as a body.
7 But if you cannot recollect together what some
8 testimony is and you need any portion of the evidence
9 read back to you, you may tell the Marshal and come
10 out and have it read. I don't want you to do that
11 immediately going into the jury room. I want you to
12 try and recollect together what the testimony actually
13 is. But if you do find that you are at a loss, you
14 may then request the testimony to be read.

15 Now, there are two types of evidence
16 from which you may find the truth as to the facts in
17 this case. There is direct evidence and circum-
18 stantial evidence. Evidence is direct when the facts
19 are shown by exhibits or by sworn testimony. That
20 sworn testimony would naturally be from the witnesses
21 who were here and the testimony of a witness who
22 asserts full knowledge of the facts from something he
23 has learned through the exercise of one of his five
24 fundamental senses, that is, his sight, his hearing,
25 his taste, his smell, his touch.

1 Now, evidence is circumstantial when
2 facts are shown by means of drawing a logical
3 conclusion from other facts that are shown by
4 direct evidence. One of the best examples of
5 circumstantial evidence would be Robinson Crusoe
6 walking across the beach and he sees a footprint
7 in the sand, and he concluded from that that there
8 was somebody else on that island. And it is
9 circumstantial, however. He drew a conclusion from
10 a circumstantial piece of evidence. And you may do
11 that in this case.

12 Now, in determining the guilt or
13 innocence of a defendant, the law makes no distinction
14 between the weight to be given to either direct or
15 circumstantial evidence. There is no greater degree
16 of certainty required of circumstantial evidence than
17 direct evidence. The law simply requires that before
18 convicting a defendant, the jury must be satisfied of
19 the defendant's guilt beyond a reasonable doubt from
20 all of the evidence in the case. Therefore, you should
21 weigh all of the evidence. And if, after weighing it,
22 you are not convinced of the guilt of the defendant
23 beyond a reasonable doubt, you must find him not guilty.
24 Unless you are otherwise instructed, the evidence in
25 the case always consists of the sworn testimony of the

1 witnesses, regardless of who may have called them,
2 all of the exhibits received into evidence, regard-
3 less of who may have produced them, and all of the
4 facts which have been admitted or stipulated to.

5 Now, if any evidence as to which an
6 objection was sustained by the Court or ordered
7 stricken by the Court is sought to be considered by
8 any member of the jury, I tell you that that is wrong,
9 it should be entirely disregarded.

10 Now, unless you are otherwise in-
11 structed, anything you have seen or heard outside
12 of the courtroom is also not evidence and must be
13 disregarded. You are to consider only the evidence
14 in this case. But in your consideration of that
15 evidence, you are not limited to the bold statements
16 of the witnesses. In other words, you are not
17 limited solely to what you see or hear as to the
18 testimony of the witness. You are permitted to draw
19 from the facts which you find have been produced,
20 such reasonable inferences, as you feel are justified
21 in the light of your own experience.

22 Now, remember, however, that the
23 indictment in this case is but a formal method of
24 accusing the defendant of a crime, it is not evidence
25 of any kind. And likewise, the statements or the

1 arguments of Counsel are not evidence unless they
2 were made as an admission or a stipulation of facts.

3 Now, one of the most important functions
4 for you to determine in any case is, which of the
5 witnesses you will believe. And you, as jurors, are
6 the sole judges as to the credibility of the wit-
7 nesses and the weight that their testimony deserves.
8 You must carefully consider the testimony of every
9 witness, whether called by the Government or whether
10 called by the defense. You are not to be influenced
11 by the number of witnesses called or by the length
12 of the trial. You are concerned not with the quantity
13 of the evidence, but with the quality.

14 Now, the first test which you should
15 apply in determining the trustworthiness of a witness
16 is to measure what he says against your plain ordinary
17 every day common sense. You are not bound to believe
18 unreasonable statements or to accept testimony that
19 defies your own common sense or insults your intelli-
20 gence just because the statements happen to be made
21 here under oath. In deciding whether you believe a
22 witness or not, you should consider his conduct and
23 his demeanor on the stand. You should size the witness
24 up, how did he impress you, was he being frank with
25 you, was his version of the evidence straightforward,

1 was he trying to conceal or to hold back some
2 testimony, was he just parroting some answers, does
3 he have any motive to testify falsely, is he
4 interested in any way in the outcome of this case,
5 how strong or weak was his memory of important
6 events, did he forget something that is in fact
7 unforgettable. In short, can you rely upon him,
8 can you trust him, was he hostile, was he friendly
9 towards either side of the case. You should consider
10 his opportunity to know what the facts are in the
11 matters in which he testified and the probability
12 or improbability of what he said in the light of
13 all of the circumstances, the total circumstances
14 in this case. How does his testimony add up when it
15 is considered with the other evidence in the case,
16 how far does his story check out with the documentary
17 evidence, are there any inconsistencies in his
18 testimony, and if so, how important are they.

19 Now, if you find that any witness has
20 deliberately and willfully lied to you with respect
21 to any material fact in his testimony, you may follow
22 several courses. You may accept as much of his
23 testimony as you believe to be truthful. You may
24 reject, if you wish, that portion which you do not
25 believe to be truthful. You may reject his entire

1 testimony. In other words, you may believe all,
2 some or none of his testimony.

3 Now, as I told you in the opening
4 charge to you, and in fact, when we were selecting
5 you as jurors, the defendant in this case has no
6 burden whatsoever. He is under no obligation to
7 produce any witnesses. He is presumed to be innocent,
8 and that presumption is still with you and continues
9 with you throughout the trial and throughout your
10 deliberations as jurors. This presumption is overcome
11 only when the Government establishes the guilt of the
12 defendant beyond a reasonable doubt. Now, that term
13 may confuse you a little, so let me tell you what I
14 mean by beyond a reasonable doubt. As it implies, a
15 reasonable doubt is a doubt which is based upon
16 reason, a reason which appears in the evidence or in
17 the lack of evidence. It is not some vague or
18 speculative or imaginary, inconceivable doubt, nor a
19 doubt based upon emotion or sympathy or prejudice, or
20 a doubt based upon what you might consider to be an
21 unpleasant duty for you to perform. The Government
22 is not required to prove that the defendant is guilty
23 beyond every conceivable or possible doubt, nor to
24 an absolute or mathematical certainty, because such a
25 measure of proof is, of course, almost impossible in

1 human affairs. You should review only the evidence
2 as you remember it, sift out what you believe,
3 discuss it, analyze it, compare your view of the
4 evidence with your fellow jurors, and if that process
5 produces a solemn belief or a conviction in your
6 mind such that you would be willing to act upon
7 without hesitation if this was a matter of some
8 importance to yourself, then you may say that you
9 have been convinced beyond a reasonable doubt. On
10 the other hand, if, after going through that process,
11 your mind is wavering or you are so uncertain that
12 you would hesitate before acting if this were an
13 important matter of your own, then you have not been
14 convinced beyond a reasonable doubt and your verdict
15 must be not guilty.

16 Now, as we told you earlier, there are
17 three counts in the indictment, and let me discuss
18 with you the charges in this case.

19 The indictment charges the defendant
20 with three separate counts or violations of the law
21 of the United States which makes it a crime to make
22 false statements to a bank for the purpose of
23 influencing the bank in connection with a loan or
24 a credit transaction. Each count in the indictment
25 constitutes a separate and distinct offense, and each

1 count must be considered and decided by you
2 separately. In other words, you must decide the
3 guilt or the lack of guilt on the part of the
4 defendant separately as to each count in the indict-
5 ment.

6 Now, in order to convict this defendant
7 as to each count, the Government has the burden of
8 proving beyond a reasonable doubt, the following
9 three essential elements:

10 One, that the Bankers Trust Company
11 of Central New York was insured by the Federal
12 Deposit Insurance Corporation.

13 Two, that the defendant knowingly made
14 a false statement to the Bankers Trust Company of
15 Central New York.

16 And three, that he made the false
17 statement for the purpose of influencing the action
18 of Bankers Trust Company to act favorably in
19 connection with a line of credit.

20 Now, that line of credit, as the
21 testimony showed, was established on behalf of
22 Mutual Auto Sales, Incorporated, and they must show
23 that that false statement was made for the purpose of
24 influencing that line of credit.

25 Now, when I say that the defendant acted

1 knowingly, I mean simply that he acted voluntarily
2 and intentionally, and not because of some mistake or
3 some accident or some other entirely innocent reason.
4 If you find the defendant guilty, it is not necessary
5 to find that he knew that he was violating a Federal
6 law or that he was making a false statement to a
7 federally insured bank, nor is it necessary to find
8 that the bank relied on the false statements taken
9 and relied on them in taking any action which they
10 took. To find the defendant guilty, it is only
11 necessary to find that he knew that the statement
12 was false and that he was providing the statement
13 to a bank, and that he made this statement intending
14 to influence the action of the bank in connection
15 with loans to Mutual Auto Sales, Incorporated, and
16 further, that that bank was in fact insured with the
17 F.D.I.C.

18 Now, knowledge and intent being elements
19 of the state of mind of the defendant, are very
20 rarely capable of any direct proof. And accordingly,
21 the defendant's knowledge of intent may be inferred
22 from his conduct, from his statements and from all
23 of the circumstances and the facts surrounding this
24 case. The gist of the offense charged in this case
25 is an attempt to influence the bank's action through

1 delivery or communication of false statements. You
2 are here to determine the guilt or innocence of the
3 accused from the evidence in the case. And if the
4 evidence in the case convinces you beyond a reasonable
5 doubt of the guilt of the accused, you should find him
6 guilty. But if any reasonable doubt remains in your
7 minds after an impartial consideration of all of the
8 evidence in this case, it is your duty to find the
9 defendant not guilty.

10 Now, you are instructed that the
11 question of the possible punishment of the defendant
12 in the event of a conviction is no concern of yours,
13 and it should not enter into or influence your de-
14 liberations in any way. The duty of imposing sentence
15 in the event of conviction rests exclusively upon the
16 Court. The function of the jury is to determine the
17 weight of the evidence in the case, to determine the
18 guilt or the non-guilt of the defendant solely based
19 on that evidence.

20 When you retire to the jury room, I
21 would instruct you that you should elect one of your
22 members to serve as your foreman or forelady and to
23 address whatever communications, or to announce your
24 verdict to the Court. If you do not desire to elect
25 a foreman or forelady, you may appoint juror number one

1 to act in such capacity.

2 Now, I want you to, when you go to the
3 jury room, treat one another with respect, please.
4 And I know that you will do that. If any differences
5 of opinion arise between you, your discussion should
6 be calm, dignified and intelligent, and your verdict
7 must, of course, as I told you before, be based upon
8 the evidence and the law that I am now giving you.
9 The evidence was presented in this case, and I am sure
10 that what I am saying to you you will understand, you
11 should base that upon your collective memory of what
12 it was in your collective memory of the law as I am
13 giving it to you now.

14 Now, of course, you are each entitled
15 to your opinion, and you should never acquiesce in a
16 verdict against your own individual judgment. I would,
17 however, point out to you that no one should enter
18 the jury room with such a pride in his own opinion
19 that he would refuse to change his or her mind no
20 matter how convincing or how persuasive or how
21 intelligent the argument of another juror is.
22 Discussion and deliberations are at the very heart
23 of our jury process, and your deliberations should be
24 approached in that spirit. You should talk out your
25 differences, and each of you should, in effect, decide

1 the case for him-or herself, and after thoroughly
2 reviewing the evidence and frankly discussing it with
3 your fellow jurors with an open mind, you should then
4 come to a verdict and you should come with a desire
5 to reach a verdict, not a desire to be obstinate about
6 your own opinion. If you do that, you will be
7 acting in the true democratic process of the American
8 jury system.

9 Now, there are 12 of you on the jury,
10 and as I informed you before, the two alternate
11 jurors will be excused before you retire for any
12 deliberations. But I am instructing you now that
13 the 12 of you, your verdict must be unanimous and it
14 must represent the honest conclusion of each of you.

15 I will now submit the case to you with
16 every confidence that you will fully measure up to
17 the oath which you took as members of the jury to
18 decide the issues before you fairly and impartially
19 and without fear or favor. To guide you in your de-
20 liberations, I will send a copy of the indictment in
21 with you, and the exhibits that have been introduced
22 here.

23 Now, I want to say to you once more that
24 if you find that the Government has failed to establish
25 the guilt of the defendant without a reasonable doubt,

1 you should find the defendant not guilty. If you find
2 the defendant has not violated the law, you should not
3 hesitate for any reason to render a verdict of not
4 guilty. On the other hand, if you find that the
5 Government has established the guilt of the defendant
6 beyond a reasonable doubt, you should not hesitate
7 because of sympathy or any other reason to render a
8 verdict of guilty. The foreman or forelady will then
9 return the verdict to the Court. You will return an
10 oral verdict in open Court of either guilty or not
11 guilty, and I hope that you all do that in consideration
12 of each other.

13 Any exceptions, gentlemen?

14 MR. WARCHOL: No, Your Honor.

15 MR. PAVONE: No exceptions, Your Honor.

16 THE COURT: Any requests?

17 MR. PAVONE: No additional requests,
18 Your Honor.

19 MR. WARCHOL: No, Your Honor.

20 THE COURT: All right. Will the clerk
21 swear the marshals, please.

22 (The marshals were sworn by the clerk).

23 THE CLERK: The alternate jurors are now
24 excused from further consideration of this case, and
25 the jury will now retire.

1 THE COURT: The alternate jurors are
2 also excused with the thanks of the Court.

3 (Jury returns with verdict at 8:40 p.m.).

4 THE CLERK: Ladies and gentlemen of the
5 jury, have you agreed upon a verdict, and if so, how
6 do you find and who shall speak for you?

7 FOREMAN OF THE JURY: Your Honor, we,
8 the jury, found the defendant guilty.

9 THE CLERK: On all three counts?

10 FOREMAN OF THE JURY: Count one.

11 THE CLERK: And not guilty on count two
12 and not guilty on count three?

13 FOREMAN OF THE JURY: Yes.

14 THE CLERK: Harken to your verdict,
15 ladies and gentlemen, as the Court has recorded it,
16 you say you find the defendant, Joseph Pugia, guilty
17 on count one, not guilty on count two and not guilty
18 on count three, and so say you all?

19 (Jury replies affirmatively).

20 THE COURT: Would you like the jury
21 polled?

22 MR. WARCHOL: Yes, Your Honor, I would.

23 THE CLERK: Ladies and gentlemen, as your
24 name is called, please give your verdict as to each
25 count.

26,000 ON DEPOSIT WITH AMERICAN MOTORS CORP.

Form CR 107

Statement Form Suggested By
FEDERAL RESERVE BANK OF NEW YORK

FINANCIAL STATEMENT

PERSONAL

As of 8 - 13 1974

NAME JOSEPH R. PUGIA SR.
OCCUPATION PRES. MUTUAL AUTO SALES INC.
OR PROFESSION

RESIDENCE 507 BELLINGER AVE HERKIMER
BUSINESS ADDRESS 405 E. ARBON ST. HERKIMER

I make the following statement of all my assets and liabilities at the close of business on the date indicated above to
MONTAUK VANEY STATE BANK, BANKERS TRUST
(Name and Location of Financial Institution)

and give other material information for the purpose of obtaining advances on notes and bills bearing my signature, endorsement, or guaranty, and for obtaining credit generally upon present and future applications.

ASSETS		LIABILITIES and NET WORTH	
Cash on Hand	\$ 400	Notes Payable to Banks — Unsecured	\$ 11,500
Cash in Banks	(Sch. No. 1) 3800	Direct borrowings only (Sch. No. 1)	
Notes Receivable	(Sch. No. 2) NONE	Notes Payable to Banks — Secured	6500
Accounts Receivable	(Sch. No. 2) NONE	Direct borrowings only (Sch. No. 1)	
Loans Receivable	(Sch. No. 2) NONE	Notes Payable to Others — Unsecured	NONE
Life Insurance — Cash Surrender Value	(Do not deduct loans) (Sch. No. 3) 840	Notes Payable to Others — Secured	NONE
Securities — Readily Marketable		Accounts Payable	NONE
U. S. Govt. & listed on Stock Exchanges (Sch. No. 4)	NONE	Loans against Life Insurance	(Sch. No. 3) NONE
Securities — Not Readily Marketable		Real Estate Mortgages Payable	(Sch. No. 7) 9500
Unlisted stocks & bonds (Sch. No. 4)		Real Estate Taxes & Assessments Payable	(Sch. No. 7) NONE
Mortgages Owned	(Sch. No. 5) NONE	Federal & State Income Taxes	NONE
Real Estate	(Sch. No. 6) 47,000	Other Taxes	NONE
Automobile(s)		Interest Payable	
Registered in own name	3,200	On loans, mortgages, etc.	NONE
Other Assets (Itemize)	HOUSE HOLD FURN 5,000	Brokers Margin Accounts	(Sch. No. 8) NONE
	TWO LOTS HERKIMER 10,000	Other Liabilities (Itemize)	NONE
	DEPOSIT w/ A.M.C. 26000		
TOTAL ASSETS	91,240	TOTAL LIABILITIES & NET WORTH	63,740
			27,500
			91,240

SUPPLEMENTARY SCHEDULES

NOTE: The following data should be furnished as of the same date as this Financial Statement. Fill in all spaces; insert "NONE" where appropriate.

No. 1 — Banking Relations — List all bank accounts, including savings accounts:

Name and Location of Bank	Cash Balance	Amount of Loan	Indicate How Loan is Endorsed, Guaranteed or Secured
NEW YORK TELEPHONE CREDIT	3800		
MONTAUK VANEY	11,500		NOTE TO BE PAID 8-15-74

No. 2 — Notes, Accounts and Loans Receivable — List the largest amounts owed to you:

Name and Address of Debtor	Amount of Debt	Age of Debt	Nature of Debt	If Secured, Describe Security	Date Payment Expected
	\$				

No. 3 — Life Insurance — List all policies in which you are named as the insured:

Beneficiary	Insurance Company	Type of Policy	Face of Policy	Total Cash Surrender Value	Total Loans Against Policy	If Assigned, Indicate To Whom
ANITA PUGIA	PRUDENTIAL	LIFE	10,000	840	NONE	ME
MARK T. PUGIA	PRUDENTIAL	LIFE	25,000			

No. 4 — Securities — List all stocks, bonds, etc.:

Face Value (Bonds) No. of Shares (Stocks)	Description of Security	Registered Owner(s)	Cost	Market Value	Book Value	If Pledged, Indicate To Whom
			\$	\$	\$	

SUPPLEMENTARY SCHEDULES—(Continued)

No. 5 — Mortgages Owned —

Location and Description of Mortgaged Properties	Assessed Value	Market Value	Amount of Owned Mortgage	Mortgage Interest Due & Unpaid	Indicate if First or Second Mortgage	Amount of Prior Mortgage
1000-11111111	\$	\$ 7,000	\$ 4,500	\$ NONE	FIRST	\$ NONE
1000-11111111		14,000	NONE	NONE	NONE	NONE
1000-11111111						
1000-11111111						

Mortgage Income — During the 12 month period ended 1974, I received interest payments of \$ and principal payments of \$ on the above described mortgages.

No. 6 — Real Estate —

Location and Description of Owned Properties	Cost with Improvements	Assessed Value	Market Value	Book Value	Annual Gross Rental Income	Annual Net Rental Income (Before Depreciation)
1000-11111111	\$ 5,000	\$ 10,000	\$ 10,000	\$	\$ NONE	\$ NONE
1000-11111111						
1000-11111111						
1000-11111111						

Title to Real Estate — The title to all of the above described properties is in my name solely, except as follows (give details):
NONE — NONE

No. 7 — Real Estate Mortgages Payable — List all mortgages on the above properties; follow the same sequence:

First Mortgages		Second Mortgages		Mortgage Payments Due Within One Year	Mortgage Interest Due & Unpaid	Taxes and Assessments Due & Unpaid
Amount	Maturity	Amount	Maturity			
\$ NONE		\$		\$	\$	\$

No. 8 — Brokers Margin Accounts — List the names and addresses of the brokers and indicate the net amount due to each:

NONE

SUPPLEMENTARY INFORMATION

Personal Data — Age 37; Marital Status MARRIED; No. of Dependents 3; Spouse's Name MARLENE ROBINSON

Income and Expense — My gross income from all sources during the 12 month period ended 8-13-74, 1974, amounted to \$ 34,000. My personal living expenses and those of my dependents during that period amounted to \$, and I had other expenses for income taxes, insurance premiums, interest on debts, etc., of \$. I expect no important changes in my income or expenses during the current year or next year, except as follows (give details):

Contingent Liabilities — As of the date of this financial statement, I had no contingent liabilities, except as follows: Notes Receivable Discounted or Sold \$; Accounts Receivable Assigned or Sold \$; Co-maker \$; Accommodation Endorser, Guarantor or Surety \$; Mortgage Bonds \$; Leases \$; Claims for Taxes \$; Other (describe): NONE

Pledged, Assigned or Hypothecated Assets — Describe all assets not noted elsewhere in this statement as having been pledged, assigned or hypothecated and indicate the liabilities which they secure: NONE

As of the date of this financial statement, I had not pledged, assigned, hypothecated or transferred the title to any of my assets, except as noted on this form or on a supporting schedule, nor has any such action been taken since that date, except as follows (give details):

Legal Actions — No lawsuits, claims, judgments, or other legal actions are outstanding or pending against me and, to the best of my knowledge, no legal actions are to be started against me, except as follows (give details): NONE

Insurance Coverage — Fire Insurance: Buildings \$30,000, Automobile(s), Household Effects, etc. \$10,000; Indicate if policies have extended coverage endorsement: YES; Liability Insurance: Automotive \$, Personal \$, General Public \$; Other Insurance (describe):

Date of latest independent analysis of insurance: JAN - 74; Indicate adequacy of coverage:

Certification — This is to certify that all the statements contained herein and in any supporting schedules are true and give a correct showing of my financial condition as of the date indicated. I further certify that I had no liabilities, direct or contingent, business or accommodation, except as set forth in this statement, and that the title to all assets therein set forth is in my name solely, except as may be otherwise noted. IN THE EVENT OF ANY MATERIAL ADVERSE CHANGE IN MY FINANCIAL CONDITION, I AGREE TO NOTIFY THE FINANCIAL INSTITUTION NAMED HEREIN IMMEDIATELY IN WRITING.

Signed this 13 day of SEP, 1974. [Signature]

NOTE: If space is insufficient, separate schedules, which should be clearly identified as being part of this statement, may be attached hereto. Such schedules should be dated and signed in the same manner as this statement.

CERTIFICATE OF SERVICE

August 7, 1978

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the ~~Southern~~ District of New York. **Northern**

Barry Bassis